

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JOHN P. HENNING
CLERK

2014 MAY 12 AM 9:15

AGRICULTURE & ENERGY
CARRIERS LTD

Plaintiff,

v.

UNITED COALS, INC

Defendant.

Case No.:

Judge:

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EAST DIV. COLUMBUS
2:14 CV 434

JUDGE EARGUS

MAGISTRATE JUDGE KEMP

VERIFIED COMPLAINT FOR ATTACHMENT AND GARNISHMENT

Plaintiff, Agriculture & Energy Carriers Ltd ("AEC" or "Plaintiff") submits this verified complaint against United Coals, Inc ("United Coals" or "Defendant"), and alleges as follows:

THE PARTIES, JURISDICTION, AND VENUE

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and falls under this Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333.

2. AEC brings this action to obtain security for a maritime claim pursuant to Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Rule B"), seeking an order and writ of attachment over property of Defendant including but not limited to property of Defendant beneficially maintained by garnishees within the District.

3. At all times relevant hereto, Agriculture & Energy Carriers Ltd is and was a foreign business entity organized under the laws of a foreign state. AEC has a place of business at Building 3, Western Road, Mount Pleasant, N-7776-283 Nassau, Bahamas.

4. At all times relevant hereto, United Coals, Inc is and was a business entity organized under the laws of West Virginia. United Coals maintains a business address at 231 South Third Street, Clarksburg, West Virginia.

5. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1333 because this action arises from a maritime contract, i.e., demurrage, deadfreight and costs under a charter party agreement.

AEC'S CLAIM AGAINST UNITED COALS

6. On January 1, 2014, AEC and United Coals executed a charter party on the Americanized Welsh Coal Charter form for the vessel M/V MARDINK (the "Vessel") for the shipment of 31,500 metric tons of coal from the Morgan Terminal, Louisiana to Casablanca, Morocco. The charter party is governed by New York law and calls for arbitration in New York.

7. The agreed freight is \$37.75 per metric ton, by amendment to the charter party dated February 6, 2014.

8. On February 14, 2014 at 11:10am the Vessel tendered a Notice of Readiness for the loading of cargo.

9. Based on an agreed total load capacity of 31,500-31,900mts of coal to be loaded at a rate of 24,000mts/day, the Vessel went on demurrage on February 16, 2014 at 6:40am.

10. The charter provides that the Charterer shall pay \$22,000.00 per running day (or pro rata part thereof) demurrage (clause 4).

11. To date, Charterer has failed to load cargo due to problems obtaining a letter of credit acceptable to the Shipper. Charterer has made continual, daily representations to Owner that the Vessel will be ready to load the next day, however, demurrage has continued to accrue

and the Vessel has not loaded cargo. These daily assurances by Charterer have gone on since February 2014 and have continued to up until the time of drafting of this Complaint.

12. AEC has sent invoices to United Coals calling upon them to make payment for demurrage which continues to accrue. A true and correct copy of the most recent invoice is attached hereto as Exhibit 1. To date, United Coals has not made any payments.

13. To date, demurrage has run at a rate of \$22,000/day for 79.43 days, totaling \$1,747,395.76. If Charterer fails to perform, as of May 6, 2014 at 24:00hrs, and \$22,000/day everyday thereafter until the date of the attachment order.

14. If Charterer fails to perform, AEC is further entitled to recover \$522,410 for deadfreight and \$88,767 for costs related to the nonperformance of United Coals. True and correct calculations of damages are attached hereto as Exhibit 1.

APPLICATION FOR ISSUANCE OF RULE B ATTACHMENT

15. AEC seeks an order of attachment directing the seizure of United Coal's assets in the District pursuant to Rule B of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Proceedings of the Federal Rules of Civil Procedure ("Rule B") up to the amount of \$1,747,395.76.

16. Defendant United Coals is not found within the Southern District of Ohio within the meaning of Rule B, but has assets, goods or chattels within the jurisdiction, such as: assets, debts, rights to payment including a Letter of Credit (attached hereto as Exhibit 2) and other property within the District with the following entities: Huntington National Bank, 41 S. High Street, Columbus, OH 43287.

17. Upon information and belief, United Coals Inc maintains one or more bank accounts at Huntington National Bank as well as a Letter of Credit which is effected through the presentment of appropriate papers at the headquarter branch in Columbus, Ohio.

PRAYER FOR RELIEF

1. That process in due form of law according to the practice of this Court in the form of a writ of maritime attachment and garnishment be issued against property of Defendant with the garnishee Huntington National Bank, or any other garnishees upon whom the writ of maritime attachment and garnishment may be served;

2. That Defendant United Coals Inc, and any other person claiming an interest therein, may be cited to appear in the matters aforesaid and that judgment be entered against United Coals Inc and in favor of Agriculture & Energy Carriers Ltd in an amount to be determined at trial, but not less than \$1,747,395.76;

3. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof; and,

4. That this Court grant Plaintiff such other and further relief which it may deem just and proper.

Respectfully Submitted,



Amelia A. Bower (No. 0013474)
PLUNKETT COONEY
300 East Broad Street, Suite 590
Columbus, Ohio 43215
Direct: (614) 629-3004
Fax: (614) 629-3019
Email: abower@plunkettcooney.com

EXHIBIT 1



UNITED COALS
231 South Third Street
West Virginia
26301 Clarksburg
UNITED STATES

Ref. No: 0082006
Invoice Date: 06.05.2014
Customer no: 40388
Contact Person: Vaibhav Mehta

INVOICE

MARDINIK / IMO NO.: 9470571 / INVOICE NO.: 4296741 CP date: 24.01.2014

USD

Demurrage MYRTLE GROVE, LA USD 22000/day x 79.42708 days	1,747,395.76
Less 2.50% broker commission (AFFREMARINE SA)	-43,684.89

Total Payable

1,703,710.87

U.S. Dollar One Million Seven Hundred Three Thousand Seven Hundred Ten And Eighty Seven Cents Only

Beneficiary Bank: Credit-Suisse, Zurich
Glesshubelstrasse
SWITZERLAND
Swift: CRESCHZZ80A
IBAN: CH27 04835139011972000

Beneficiary Name: Agriculture & Energy Carriers Ltd.

Reference: Mardink -
Laytime Invoice

Terms of Payment:
Prompt payment
Due date 06.05.2014.

This is a computer generated document. No signature is required.

Address:
Agriculture & Energy Carriers Ltd.
Bahamas
C/O
Building 3, Western Road
Mount Pleasant
N-7776-283 Nassau
BAHAMAS

Telephone:

Telefax:

RATE AND DURATION		Option
Rate	Rate	
Duration		
35	8.000	

REMARKS ()

[illegible][illegible]

Voyage Printout

Printed Date: 06.05.14 16:14

Created By: CG

Page: 1 of 1

Start Date 01.Jun.2014 Calculation Reference No. 14701

Vessel	MARDINIK	Cleaning	0 x 0 d	Freight	1,204,225
Vessel Size	33,918	Heating	0 x 0 d	Various Revenue	0
Speed	FO			Demurrage	0
Ballast	13.90 26.50	At Sea	DO 0.10	GROSS REVENUE	1,204,225
Loaded	13.40 26.50	In port	0.20/0.40 2.80/5.80	Commission	30,106
Ballast Port	SW			Despatch	0
	PASS			NET REVENUE	1,174,119
Port Rotation	MYRTLE GROVE / CASABLANCA			Port Cost Load	95,000
Charterer	UNITED COALS			Port Cost Dis.	41,000
Broker	AFFREMARE			Port Cost Other	0
CP Date				DA Commission	0.00
Cargo Quantity	31,900MT			Canal Cost	0
Commodity	Coal	SF	0.00	ILOHC	0
Freight	USD 37.75/MT			Handling Cost	0
Fiat Rate	0.00	Min Quantity	0.00	Various Cost	23,785
Broker Com.	2.50	Addr. Com.	0.00	Freight Cost	0
Demurrage Rate	0	Despatch Rate	0	FO	605/MT 385.238MT 233,069
Terms	24000/7500			DO	1,000/MT 4.377MT 4,377
				FO (LS)	715/MT 77.946MT 55,731
				DO (LS)	1,000/MT 0.735MT 735
				TOTAL COST	453,698
Waiting	0.00	Miles		TC Equivalent	27,598
Ballast passage	0.22	67			Contr. 720,422
Loaded passage	15.32	4,480		TC Cost/Day	7,881
Canal Passage	0.00			Ballast Bonus	0 3.75%
Loading	1.33			Breakeven/Day	0 3.75%
Discharging	7.23			C/V/E	0
Extra In Port	2.00			Result/Day	20,013
TOTAL DAYS	26.10			VOYAGE RESULT	522,410
Extra At Sea	10.00%	1.41days			

COMMENT

32k/10 coal Norf/Casa9.75 bss Feb 3/10 original lc

REMARK ()

PORT ROTATION

Port	RFC	Miles	Port Cost	Handling Cost	Extra In Port	Days In Port
MYRTLE GROVE, LA	L	67	95,000	0	1.00	2.33
CASABLANCA	D	4,480	41,000	0	1.00	8.23

SENSITIVITY ANALYSIS

Seq. no	Freight Rate	Gross Revenue	Contribution	TCE	Sea +1	Port +1	Port -1
1	36.00	1,148,400	665,992	25,513	-946.64	-1090.86	1177.77
2	36.25	1,156,375	673,768	25,811	-957.63	-1101.85	1189.64
3	36.50	1,164,350	681,543	26,109	-968.62	-1112.84	1201.50
4	36.75	1,172,325	689,319	26,407	-979.61	-1123.83	1213.37
5	37.00	1,180,300	697,095	26,704	-990.60	-1134.82	1225.23
6	37.25	1,188,275	704,870	27,002	-1001.59	-1145.81	1237.10
7	37.50	1,196,250	712,646	27,300	-1012.58	-1156.80	1248.96
8	37.75	1,204,225	720,422	27,598	-1023.57	-1167.79	1260.83
9	38.00	1,212,200	728,197	27,896	-1034.56	-1178.78	1272.69
10	38.25	1,220,175	735,973	28,194	-1045.55	-1189.77	1284.56
11	38.50	1,228,150	743,748	28,492	-1056.54	-1200.76	1296.42
12	38.75	1,236,125	751,524	28,789	-1067.53	-1211.75	1308.29
13	39.00	1,244,100	759,300	29,087	-1078.52	-1222.74	1320.15
14	39.25	1,252,075	767,075	29,385	-1089.51	-1233.73	1332.02
15	39.50	1,260,050	774,851	29,683	-1100.50	-1244.72	1343.88

EXHIBIT 2

Office National de l'Electricité et de l'Eau Potable

كتب الوطني للكهرباء والماء الصالح للشرب

Branche Electricité
3/DF/DGR/GC/20013/2014

قطاع الكهرباء
Casablanca, le

Marché n° SC 94 415 F5
Fourniture de charbon vapeur destiné à
la centrale thermique de Mohammedia.

BANQUE CENTRALE POPULAIRE
101, BD MOHAMED ZERKTOUNI

Demande d'ouverture de crédit documentaire
Compte n° 190 780 21212 1995719 003 2 80

CASABLANCA

Engagement d'importation
V/Référence : 142 du 03/02/14.

Pour notre compte, veuillez ouvrir par câble opérationnel
un crédit documentaire irrévocable confirmé.
Valable jusqu'au 31 juillet 2014.

BENEFICIAIRE UNITED COALS, INC 231, South Thrd St, Clarksburg, West Verginia - Etats-Unis	
Domicilié auprès de The Huntington National Bank IBAN : HUNTUS33 US Banking Institution: The Huntington National Bank Swift Code: HUNTUS33 ABA Routing Number : 051903761 Bank Account: 01521113051 Beneficiary Name: UNITED COALS, INC	
Expéditions partielles autorisées Transbordements interdits Lieu d'embarquement : Norfolk, VA, USA. Jusqu'au 30 avril 2014. Destination : Port de Casablanca MAROC. Assurance : A souscrire par l'ONEE	Montants : - FOB : USD ± 10% - Frêt : USD ± 10% - CFR : USD ± 10% (Deux millions neuf cent soixante-seize mille dollars US) ± 10% Utilisable CFR.

Contre remise des documents listés dans l'annexe ci-jointe relatifs à l'expédition de 32 000,00 tonnes métriques (TM) ± 10% de charbon vapeur.

INSTRUCTIONS PARTICULIERES

- Tous les frais de votre correspondant en dehors du Maroc sont à la charge du bénéficiaire,
- Les résultats d'analyses doivent être compris dans les limites des valeurs extrêmes admissibles du paragraphe II de l'annexe ci-jointe,
- Les paiements sont effectués dans les conditions prévues au paragraphe III de l'annexe ci-jointe,
- Les documents (objet du paragraphe I de l'annexe ci-jointe) présentés après 21 jours de la date de connaissance sont acceptables,
- Les documents (objet du paragraphe I de l'annexe ci-jointe) rédigés en langue anglaise sont acceptables.
- La confirmation du crédit documentaire se fera à la demande du bénéficiaire et ce, à ses frais,
- Il vous appartient d'informer les personnes mentionnées en annexe (paragraphe IV) et ce, selon les cas indiqués.
- Les documents (objet du paragraphe I de l'annexe ci-jointe) mentionnent Tiers sont acceptables.
- Les documents et BL antédattés sont acceptables.

P.J : Annexe (2 pages)

L'OFFICE NATIONAL DE L'ELECTRICITE ET DE L'EAU POTABLE

Branche Electricité

Le Trésorier

Le Directeur



65, Othmane Ben Affane - Casablanca - Maroc - PB. : 13 498 - Tél : (212) 522 66 80 80 - Fax : (212) 522 22 00 38
(212) 522 22 00 38 - فاكس : (212) 522 66 80 80 - هاتف : 13 498 - ص.ب. : 13 498 - الدار البيضاء - المغرب - م.ب. : 13 498 - (212) 522 66 80 80 - (212) 522 22 00 38